

STATE OF NEW YORK

1520

2017-2018 Regular Sessions

IN SENATE

January 10, 2017

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the legislative law, in relation to creating the consulting act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The legislative law is amended by adding a new article 1-B
2 to read as follows:

3 ARTICLE 1-B
4 CONSULTING ACT

5 Section 1-aa. Short title.

6 1-bb. Definitions.

7 1-cc. Powers of the commission.

8 1-dd. Statement of registration.

9 1-ee. Monthly registration docket.

10 1-ff. Termination of retainer, employment or designation.

11 1-gg. Bi-monthly reports.

12 1-hh. Contingent retainer.

13 1-ii. Reports involving disbursement of public monies.

14 1-jj. Prohibition of gifts.

15 1-kk. Penalties.

16 1-ll. Enforcement.

17 1-mm. Record of appearances.

18 1-nn. Publication of statement on consultant disclosure regu-
19 lations.

20 1-oo. Public access to records.

21 1-pp. Applicability of certain laws.

22 1-qq. Separability clause.

23 § 1-aa. Short title. This article shall be known and may be cited as
24 the "consulting act".

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 § 1-bb. Definitions. As used in this article unless the context other-
2 wise requires:

3 (a) The term "client" shall mean every person or organization who
4 retains, employs or designates any person or organization to carry on
5 consulting activities on behalf of such client.

6 (b) The term "organization" shall mean any corporation, company, foun-
7 dation, association, college as defined by section two of the education
8 law, labor organization, firm, partnership, society, joint stock compa-
9 ny, state agency or public corporation.

10 (c) The term "state agency" shall mean any department, board, bureau,
11 commission, division, office, council, committee or officer of the
12 state, whether permanent or temporary, or a public benefit corporation
13 or public authority at least one of whose members is appointed by the
14 governor, authorized by law to make rules or to make final decisions in
15 adjudicatory proceedings but shall not include the judicial branch or
16 agencies created by interstate compact or international agreement.

17 (d) The term "commission" shall mean the joint commission on public
18 ethics created by section ninety-four of the executive law.

19 (e) The term "expense" or "expenses" shall mean any expenditures
20 incurred by or reimbursed to the consultant for consulting but shall not
21 include contributions reportable pursuant to article fourteen of the
22 election law.

23 (f) The term "compensation" shall mean any salary, fee, gift, payment,
24 benefit, loan, advance or any other thing of value paid, owed, given or
25 promised to the consultant by the client for consulting but shall not
26 include contributions reportable pursuant to article fourteen of the
27 election law.

28 (g) The term "public corporation" shall mean a municipal corporation,
29 a district corporation, or a public benefit corporation as defined in
30 section sixty-six of the general construction law.

31 (h) The term "gift" shall mean anything of more than nominal value
32 given to a public official in any form including, but not limited to
33 money, service, loan, travel, lodging, meals, refreshments, enter-
34 tainment, discount, forbearance, or promise, having a monetary value.
35 The following are excluded from the definition of a gift:

36 (i) complimentary attendance, including food and beverage, at bona
37 fide charitable or political events;

38 (ii) complimentary attendance, food and beverage offered by the spon-
39 sor of a widely attended event. The term "widely attended event" shall
40 mean an event: (A) which at least twenty-five individuals other than
41 members, officers, or employees from the governmental entity in which
42 the public official serves attend or were, in good faith, invited to
43 attend, and (B) which is related to the attendee's duties or responsi-
44 bilities or which allows the public official to perform a ceremonial
45 function appropriate to his or her position. For the purposes of this
46 exclusion, a public official's duties or responsibilities shall include
47 but not be limited to either (1) attending an event or a meeting at
48 which a speaker or attendee addresses an issue of public interest or
49 concern as a significant activity at such event or meeting; or (2) for
50 elected public officials, or their staff attending with or on behalf of
51 such elected officials, attending an event or a meeting at which more
52 than one-half of the attendees, or persons invited in good faith to
53 attend, are residents of the county, district or jurisdiction from which
54 the elected public official was elected;

55 (iii) awards, plaques, and other ceremonial items which are publicly
56 presented, or intended to be publicly presented, in recognition of

1 public service, provided that the item or items are of the type custom-
2 arily bestowed at such or similar ceremonies and are otherwise reason-
3 able under the circumstances, and further provided that the functionali-
4 ty of such items shall not determine whether such items are permitted
5 under this paragraph;

6 (iv) an honorary degree bestowed upon a public official by a public or
7 private college or university;

8 (v) promotional items having no substantial resale value such as pens,
9 mugs, calendars, hats, and t-shirts which bear an organization's name,
10 logo, or message in a manner which promotes the organization's cause;

11 (vi) goods and services, or discounts for goods and services, offered
12 to the general public or a segment of the general public defined on a
13 basis other than status as a public official and offered on the same
14 terms and conditions as the goods or services are offered to the general
15 public or segment thereof;

16 (vii) gifts from a family member, member of the same household, or
17 person with a personal relationship with the public official, including
18 invitations to attend personal or family social events, when the circum-
19 stances establish that it is the family, household, or personal
20 relationship that is the primary motivating factor; in determining moti-
21 vation, the following factors shall be among those considered: (A) the
22 history and nature of the relationship between the donor and the recipi-
23 ent, including whether or not items have previously been exchanged; (B)
24 whether the item was purchased by the donor; and (C) whether or not the
25 donor at the same time gave similar items to other public officials; the
26 transfer shall not be considered to be motivated by a family, household,
27 or personal relationship if the donor seeks to charge or deduct the
28 value of such item as a business expense or seeks reimbursement from a
29 client;

30 (viii) contributions reportable under article fourteen of the election
31 law, including contributions made in violation of that article of the
32 election law;

33 (ix) travel reimbursement or payment for transportation, meals and
34 accommodations for an attendee, panelist or speaker at an informational
35 event or informational meeting when such reimbursement or payment is
36 made by a governmental entity or by an in-state accredited public or
37 private institution of higher education that hosts the event on its
38 campus, provided, however, that the public official may only accept
39 lodging from an institution of higher education: (A) at a location on or
40 within close proximity to the host campus; and (B) for the night preced-
41 ing and the nights of the days on which the attendee, panelist or speak-
42 er actually attends the event or meeting;

43 (x) provision of local transportation to inspect or tour facilities,
44 operations or property located in New York state, provided, however,
45 that such inspection or tour is related to the individual's official
46 duties or responsibilities and that payment or reimbursement for
47 expenses for lodging or travel expenses to and from the locality where
48 such facilities, operations or property are located shall be considered
49 to be gifts unless otherwise permitted under this subdivision;

50 (xi) meals or refreshments when participating in a professional or
51 educational program and the meals or refreshments are provided to all
52 participants; and

53 (xii) food or beverage valued at fifteen dollars or less.

54 (i) The term "municipality" shall mean any jurisdictional subdivision
55 of the state, including but not limited to counties, cities, towns,
56 villages, improvement districts and special districts, with a population

1 of more than five thousand, and industrial development agencies in
2 jurisdictional subdivisions with a population of more than five thou-
3 sand; and public authorities, and public corporations.

4 (j) The term "public official" shall mean:

5 (i) the governor, lieutenant governor, comptroller or attorney gener-
6 al;

7 (ii) members of the state legislature;

8 (iii) state officers and employees including:

9 (A) heads of state departments and their deputies and assistants other
10 than members of the board of regents of the university of the state of
11 New York who receive no compensation or are compensated on a per diem
12 basis,

13 (B) officers and employees of statewide elected officials,

14 (C) officers and employees of state departments, boards, bureaus,
15 divisions, commissions, councils or other state agencies,

16 (D) members or directors of public authorities, other than multi-state
17 authorities, public benefit corporations and commissions at least one of
18 whose members is appointed by the governor, and employees of such
19 authorities, corporations and commissions;

20 (iv) officers and employees of the legislature; and

21 (v) municipal officers and employees including an officer or employee
22 of a municipality, whether paid or unpaid, including members of any
23 administrative board, commission or other agency thereof and in the case
24 of a county, shall be deemed to also include any officer or employee
25 paid from county funds. No person shall be deemed to be a municipal
26 officer or employee solely by reason of being a volunteer firefighter or
27 civil defense volunteer, except a fire chief or assistant fire chief.

28 (k) The term "restricted period" shall mean the period of time
29 commencing with the earliest written notice, advertisement or sollicita-
30 tion of a request for proposal, invitation for bids, or solicitation of
31 proposals, or any other method for soliciting a response from offerers
32 intending to result in a procurement contract with a state agency, or a
33 municipal agency, as that term is defined by paragraph (ii) of subdivi-
34 sion (q) of this section, and ending with the final contract award and
35 approval by the state agency, either house of the state legislature, the
36 unified court system, or a municipal agency, as that term is defined by
37 paragraph (ii) of subdivision (q) of this section, and, where applica-
38 ble, the state comptroller.

40 (l) The term "revenue contract" shall mean any written agreement
41 between a state or municipal agency or a local legislative body and an
42 offerer whereby the state or municipal agency or local legislative body
43 gives or grants a concession or a franchise.

44 (m) The term "article of procurement" shall mean a commodity, service,
45 technology, public work, construction, revenue contract, the purchase,
46 sale or lease of real property or an acquisition or granting of other
47 interest in real property, that is the subject of a governmental
48 procurement.

49 (n) The term "governmental procurement" shall mean: (i) the public
50 announcement, public notice, or public communication to any potential
51 vendor of a determination of need for a procurement, which shall
52 include, but not be limited to, the public notification of the specifi-
53 cations, bid documents, request for proposals, or evaluation criteria
54 for a procurement contract, (ii) solicitation for a procurement
55 contract, (iii) evaluation of a procurement contract, (iv) award,
56 approval, denial or disapproval of a procurement contract, or (v)

1 approval or denial of an assignment, amendment (other than amendments
2 that are authorized and payable under the terms of the procurement
3 contract as it was finally awarded or approved by the comptroller, as
4 applicable), renewal or extension of a procurement contract, or any
5 other material change in the procurement contract resulting in a finan-
6 cial benefit to the offerer.

7 (o) The term "offerer" shall mean the individual or entity, or any
8 employee, agent or consultant of such individual or entity, that
9 contacts a state agency, either house of the state legislature, the
10 unified court system, a municipal agency or local legislative body about
11 a governmental procurement provided, however, that a governmental agency
12 or its employees that communicate with the procuring agency regarding a
13 governmental procurement in the exercise of its oversight duties shall
14 not be considered an offerer.

15 (p) The term "procurement contract" shall mean any contract or other
16 agreement, including an amendment, extension, renewal, or change order
17 to an existing contract (other than amendments, extensions, renewals, or
18 change orders that are authorized and payable under the terms of the
19 contract as it was finally awarded or approved by the comptroller, as
20 applicable), for an article of procurement involving an estimated annu-
21 alized expenditure in excess of fifteen thousand dollars. Grants, arti-
22 cle XI-B state finance law contracts, program contracts between not-for-
23 profit organizations, as defined in article XI-B of the state finance
24 law, and the unified court system, intergovernmental agreements, rail-
25 road and utility force accounts, utility relocation project agreements
26 or orders, contracts governing organ transplants, contracts allowing for
27 state participation in trade shows, and eminent domain transactions
28 shall not be deemed procurement contracts.

29 (q) The term "municipal agency" shall mean: (i) any department, board,
30 bureau, commission, division, office, council, committee or officer of a
31 municipality, whether permanent or temporary; or (ii) an industrial
32 development agency, located in a jurisdictional subdivision of the state
33 with a population of more than fifty thousand, or local public benefit
34 corporation, as that term is defined in section sixty-six of the general
35 construction law.

36 (r) The term "local legislative body" shall mean the board of supervi-
37 sors, board of aldermen, common council, council, commission, town
38 board, board of trustees or other elective governing board or body of a
39 municipality now or hereafter vested by state statute, charter or other
40 law with jurisdiction to initiate and adopt local laws, ordinances and
41 budgets, whether or not such local laws, ordinances or budgets require
42 approval of the elective chief executive officer or other official or
43 body to become effective.

44 (s) The term "commission salesperson" shall mean any person the prima-
45 ry purpose of whose employment is to cause or promote the sale of, or to
46 influence or induce another to make a purchase of an article of procure-
47 ment, whether such person is an employee (as that term is defined for
48 tax purposes) of or an independent contractor for a vendor, provided
49 that an independent contractor shall have a written contract for a term
50 of not less than six months or for an indefinite term, and which person
51 shall be compensated, in whole or in part, by the payment of a percent-
52 age amount of all or a substantial part of the sales which such person
53 has caused, promoted, influenced or induced, provided, however, that no
54 person shall be considered a commission salesperson with respect to any
55 sale to or purchase by a state agency, either house of the state legis-
56 lature, the unified court system, a municipal agency or local legisla-

1 tive body if the percentage amount of any commission payable with
2 respect to such sale or purchase is substantially in excess of any
3 commission payable with respect to any comparable sale to a purchaser
4 that is not a state agency, either house of the state legislature, the
5 unified court system, a municipal agency or local legislative body;
6 provided further, however, that any person that is required to file a
7 statement or report pursuant to this article by virtue of engaging in
8 consulting activities shall not be deemed to be a "commission salesper-
9 son" for purposes of this article.

10 (t) The term "unified court system" shall, for the purposes of this
11 article only, mean the unified court system of the state of New York, or
12 the office of court administration, where appropriate, other than town
13 and village justice courts in jurisdictions with a population under
14 fifty thousand, when it acts solely in an administrative capacity to
15 engage in governmental procurements and shall not include the unified
16 court system or any court of the state judiciary when it acts to hear
17 and decide cases of original or appellate jurisdiction or otherwise acts
18 in its judicial, as opposed to administrative, capacity.

19 (u) The term "reportable business relationship" shall mean a relation-
20 ship in which compensation is paid by a consultant or by a client of a
21 consultant, in exchange for any goods, services or anything of value,
22 the total value of which is in excess of one thousand dollars annually,
23 to be performed or provided by or intended to be performed or provided
24 by (i) any statewide elected official, state officer, state employee,
25 member of the legislature or legislative employee, or (ii) any entity in
26 which the consultant or the client of a consultant knows or has reason
27 to know the statewide elected official, state officer, state employee,
28 member of the legislature or legislative employee is a proprietor, part-
29 ner, director, officer or manager, or owns or controls ten percent or
30 more of the stock of such entity (or one percent in the case of a corpo-
31 ration whose stock is regularly traded on an established securities
32 exchange).

33 (v) The term "business dealings" shall mean (i) any contract, other
34 than an emergency contract or a contract procured through publicly-ad-
35 vertised competitive sealed bidding, which is for the procurement of
36 goods, services or construction that is entered into or in effect with
37 the public corporation at or above five hundred thousand dollars, or an
38 emergency contract, and shall include any contract for the underwriting
39 of the debt of the public corporation and the retention of any bond
40 counsel, disclosure counsel or underwriter's counsel in connection ther-
41 ewith; (ii) any acquisition or disposition of real property, other than
42 a public auction or competitive sealed bid transaction or the acquisi-
43 tion of property pursuant to the department of environmental protection
44 watershed land acquisition program, with the public corporation; (iii)
45 any concession, other than a concession awarded through publicly-adver-
46 tised competitive sealed bid, or any franchise from a public corporation
47 which has an estimated annual value at or above the dollar value defined
48 in paragraph (ii) of subdivision (w) of this section; or (iv) any
49 contract for the investment of pension funds, including investments in a
50 private equity firm and contracts with investment related consultants.
51 For purposes of this article, all contracts, concessions, franchises and
52 grants that are five thousand dollars or less in value shall be excluded
53 from any calculation as to whether a contract, concession, franchise or
54 grant is a business dealing with the public corporation.

55 (w) The term "contract" shall mean and include any agreement between a
56 public corporation or elected official and a contractor, or any agree-

1 ment between such a contractor and a subcontractor, which (i) is for the
2 provision of goods, services or construction and has a value that when
3 aggregated with the values of all other such agreements with the same
4 contractor or subcontractor and any franchises or concessions awarded to
5 such contractor or subcontractor during the immediately preceding
6 twelve-month period is valued at one hundred thousand dollars or more;
7 (ii) is for the provision of goods, services or construction, is awarded
8 to a sole source and is valued at ten thousand dollars or more; (iii) is
9 a concession and has a value that when aggregated with the value of all
10 other contracts held by the same concessionaire is valued at one hundred
11 thousand dollars or more; or (iv) is a franchise.

12 § 1-cc. Powers of the commission. In addition to any other powers and
13 duties provided by section ninety-four of the executive law, the commis-
14 sion shall, with respect to its consultant-related functions only, have
15 the power and duty to:

16 (a) administer and enforce all the provisions of this article;

17 (b) conduct a program of random audits subject to the terms and condi-
18 tions of this section. Any such program shall be carried out in the
19 following manner:

20 (i) The commission may randomly select reports or registration state-
21 ments required to be filed by consultants or clients pursuant to this
22 article for audit. Any such selection shall be done in a manner pursuant
23 to which the identity of any particular consultant or client whose
24 statement or report is selected for audit is unknown to the commission,
25 its staff or any of their agents prior to selection.

26 (ii) The commission shall develop protocols for the conduct of such
27 random audits. Such random audits may require the production of books,
28 papers, records or memoranda relevant and material to the preparation of
29 the selected statements or reports, for examination by the commission.
30 Any such protocols shall ensure that similarly situated statements or
31 reports are audited in a uniform manner.

32 (iii) The commission shall contract with an outside accounting entity,
33 which shall monitor the process pursuant to which the commission selects
34 statements or reports for audit and carries out the provisions of para-
35 graphs (i) and (ii) of this subdivision and certifies that such process
36 complies with the provisions of such paragraphs.

37 (iv) Upon completion of a random audit conducted in accordance with
38 the provisions of paragraphs (i), (ii) and (iii) of this subdivision,
39 the commission shall determine whether there is reasonable cause to
40 believe that any such statement or report is inaccurate or incomplete.
41 Upon a determination that such reasonable cause exists, the commission
42 may require the production of further books, records or memoranda,
43 subpoena witnesses, compel their attendance and testimony and administer
44 oaths or affirmations, to the extent the commission determines such
45 actions are necessary to obtain information relevant and material to
46 investigating such inaccuracies or omissions;

47 (c) conduct hearings pursuant to article seven of the public officers
48 law. Any hearing may be conducted as a video conference in accordance
49 with the provisions of subdivision four of section one hundred four of
50 the public officers law;

51 (d) prepare uniform forms for the statements and reports required by
52 this article;

53 (e) meet at least once during each bi-monthly reporting period of the
54 year as established by subdivision (a) of section one-gg of this article
55 and may meet at such other times as the commission, or the chair and
56 vice-chair jointly, shall determine;

1 (f) issue advisory opinions to those under its jurisdiction. Such
2 advisory opinions, which shall be published and made available to the
3 public, shall not be binding upon such commission except with respect to
4 the person to whom such opinion is rendered, provided, however, that a
5 subsequent modification by such commission of such an advisory opinion
6 shall operate prospectively only; and

7 (g) submit by the first day of March next following the year for which
8 such report is made to the governor and the members of the legislature
9 an annual report summarizing the commission's work, listing the consult-
10 ant's and clients required to register pursuant to this article and the
11 expenses and compensation reported pursuant to this article and making
12 recommendations with respect to this article. The commission shall make
13 this report available free of charge to the public.

14 (h) provide an online ethics training course for individuals regis-
15 tered as consultants pursuant to section one-dd of this article. The
16 curriculum for the course shall include, but not be limited to, explana-
17 tions and discussions of the statutes and regulations of New York
18 concerning ethics in the public officers law, the election law, the
19 legislative law, summaries of advisory opinions, underlying purposes and
20 principles of the relevant laws, and examples of practical application
21 of these laws and principles. The commission shall prepare those meth-
22 ods and materials necessary to implement the curriculum. Each individual
23 registered as a consultant pursuant to section one-dd of this article
24 shall complete such training course at least once in any three-year
25 period during which he or she is registered as a consultant.

26 § 1-dd. Statement of registration. (a) (i) Every consultant shall
27 annually file with the commission, on forms provided by the commission,
28 a statement of registration for each calendar year; provided, however,
29 that the filing of such statement of registration shall not be required
30 of any consultant who (A) in any year does not expend, incur or receive
31 an amount in excess of two thousand dollars for years prior to two thou-
32 sand six and in excess of five thousand dollars in the year two thousand
33 six and the years thereafter of reportable compensation and expenses, as
34 provided in paragraph (v) of subdivision (b) of section one-gg of this
35 article, for the purposes of consulting or (B) is an officer, director,
36 trustee or employee of any public corporation, when acting in such offi-
37 cial capacity; provided however, that nothing in this section shall be
38 construed to relieve any public corporation of the obligation to file
39 such statements and reports as required by this article. The amounts
40 expended, incurred, or received of reportable compensation and expenses
41 for consulting activities shall be computed cumulatively for all
42 consulting activities when determining whether the thresholds set forth
43 in this section have been met.

44 (ii) (A) Through calendar year two thousand twenty-two, such filing
45 shall be completed on or before January first by those persons who have
46 been retained, employed or designated as consultant on or before Decem-
47 ber fifteenth who reasonably anticipate that in the coming year they
48 will expend, incur or receive combined reportable compensation and
49 expenses in an amount in excess of two thousand dollars; for those
50 consultants retained, employed or designated after December fifteenth,
51 and for those consultants who subsequent to their retainer, employment
52 or designation reasonably anticipate combined reportable compensation
53 and expenses in excess of such amount, such filing must be completed
54 within fifteen days thereafter, but in no event later than ten days
55 after the actual incurring or receiving of such reportable compensation
56 and expenses.

1 (B) For calendar year two thousand twenty-three, such filings shall be
2 completed on or before January first by those persons who have been
3 retained, employed or designated as consultant on or before December
4 fifteenth, two thousand twenty-two who reasonably anticipate that in the
5 coming year they will expend, incur or receive combined reportable
6 compensation and expenses in an amount in excess of two thousand
7 dollars; for those consultants retained, employed or designated after
8 December fifteenth, two thousand twenty-two, and for those consultants
9 who subsequent to their retainer, employment or designation reasonably
10 anticipate combined reportable compensation and expenses in excess of
11 such amount, such filing must be completed within fifteen days thereaft-
12 er, but in no event later than ten days after the actual incurring or
13 receiving of such reportable compensation and expenses.

14 (iii) Commencing calendar year two thousand twenty-four and thereafter
15 every consultant shall biennially file with the commission, on forms
16 provided by the commission, a statement of registration for each bienni-
17 al period beginning with the first year of the biennial cycle commencing
18 calendar year two thousand twenty-four and thereafter; provided, howev-
19 er, that the biennial filing of such statement of registration shall not
20 be required of any consultant who (A) in any year prior to calendar year
21 two thousand twenty-five does not expend, incur or receive an amount in
22 excess of two thousand dollars of reportable compensation and expenses,
23 as provided in paragraph (v) of subdivision (b) of section one-gg of
24 this article, for the purposes of consulting and commencing with calen-
25 dar year two thousand eighteen does not expend, incur or receive an
26 amount in excess of five thousand dollars of reportable compensation, as
27 provided in paragraph (v) of subdivision (b) of section one-gg of this
28 article for the purposes of consulting or (B) is an officer, director,
29 trustee or employee of any public corporation, when acting in such offi-
30 cial capacity; provided however, that nothing in this section shall be
31 construed to relieve any public corporation of the obligation to file
32 such statements and reports as required by this article.

33 (iv) Such biennial filings shall be completed on or before January
34 first of the first year of a biennial cycle commencing in calendar year
35 two thousand twenty-four and thereafter, by those persons who have been
36 retained, employed or designated as consultant on or before December
37 fifteenth of the previous calendar year and who reasonably anticipate
38 that in the coming year they will expend, incur or receive combined
39 reportable compensation and expenses in an amount in excess of two thou-
40 sand dollars in years prior to calendar year two thousand twenty-five
41 and five thousand dollars commencing in two thousand twenty-five; for
42 those consultants retained, employed or designated after the previous
43 December fifteenth, and for those consultants who subsequent to their
44 retainer, employment or designation reasonably anticipate combined
45 reportable compensation and expenses in excess of such amount, such
46 filing must be completed within fifteen days thereafter, but in no event
47 later than ten days after the actual incurring or receiving of such
48 reportable compensation and expenses.

49 (b) (i) Such statements of registration shall be kept on file for a
50 period of three years for those filing periods where annual statements
51 are required, and shall be open to public inspection during such period;

52 (ii) Biennial statements of registration shall be kept on file for a
53 period of three biennial filing periods where biennial statements are
54 required, and shall be open to public inspection during such period.

55 (c) Such statement of registration shall contain:

1 (i) the name, address and telephone number of the consultant, and if
2 the consultant is an organization the names, addresses and telephone
3 numbers of any officer or employee of such consultant who engages in any
4 consulting activities or who is employed in an organization's division
5 that engages in consulting activities of the organization;

6 (ii) the name, address and telephone number of the client by whom or
7 on whose behalf the consultant is retained, employed or designated;

8 (iii) if such consultant is retained or employed pursuant to a written
9 agreement of retainer or employment, a copy of such shall also be
10 attached and if such retainer or employment is oral, a statement of the
11 substance thereof; such written retainer, or if it is oral, a statement
12 of the substance thereof, and any amendment thereto, shall be retained
13 for a period of three years;

14 (iv) a written authorization from the client by whom the consultant is
15 authorized to consult, unless such consultant has filed a written agree-
16 ment of retainer or employment pursuant to paragraph three of this
17 subdivision;

18 (v) the following information on which the consultant expects to
19 consult: (A) a description of the general subject or subjects, (B) the
20 legislative bill numbers of any bills, (C) the numbers or subject matter
21 (if there are no numbers) of gubernatorial executive orders or executive
22 orders issued by the chief executive officer of a municipality, (D) the
23 subject matter of and tribes involved in tribal-state compacts, memoran-
24 da of understanding, or any other state-tribal agreements and any state
25 actions related to class III gaming as provided in 25 U.S.C. § 2701, (E)
26 the rule, regulation, and ratemaking numbers of any rules, regulations,
27 rates, or municipal ordinances and resolutions, or proposed rules, regu-
28 lations, or rates, or municipal ordinances and resolutions, and (F) the
29 titles and any identifying numbers of any procurement contracts and
30 other documents disseminated by a state agency, either house of the
31 state legislature, the unified court system, municipal agency or local
32 legislative body in connection with a governmental procurement;

33 (vi) the name of the person, organization, or legislative body before
34 which the consultant is consulting or expects to consult;

35 (vii) if the consultant is retained, employed or designated by more
36 than one client, a separate statement of registration shall be required
37 for each such client;

38 (viii) (A) the name and public office address of any statewide elected
39 official, state officer or employee, member of the legislature or legis-
40 lative employee and entity with whom the consultant has a reportable
41 business relationship;

42 (B) a description of the general subject or subjects of the trans-
43 actions between the consultant or consultants and the statewide elected
44 official, state officer or employee, member of the legislature or legis-
45 lative employee and entity; and

46 (C) the compensation, including expenses, to be paid and paid by
47 virtue of the business relationship.

48 (d) Any amendment to the information filed by the consultant in the
49 original statement of registration shall be submitted to the commission
50 on forms supplied by the commission within ten days after such amend-
51 ment, however, this shall not require the consultant to amend the entire
52 registration form.

53 (e) (i) The first statement of registration filed annually by each
54 consultant for calendar years through two thousand twenty-two shall be
55 accompanied by a registration fee of fifty dollars except that no regis-
56 tration fee shall be required of a public corporation. A fee of fifty

1 dollars shall be required for any subsequent statement of registration
2 filed by a consultant during the same calendar year; (ii) The first
3 statement of registration filed annually by each consultant for calendar
4 year two thousand twenty-one shall be accompanied by a registration fee
5 of one hundred dollars except that no registration fee shall be required
6 from any consultant who in any year does not expend, incur or receive an
7 amount in excess of five thousand dollars of reportable compensation and
8 expenses, as provided in paragraph (v) of subdivision (b) of section
9 one-gg of this article, for the purposes of consulting or of a public
10 corporation. A fee of one hundred dollars shall be required for any
11 subsequent statement of registration filed by a consultant during the
12 same calendar year; (iii) The first statement of registration filed
13 biennially by each consultant for the first biennial registration
14 requirements for calendar years two thousand twenty-four and two thou-
15 sand twenty-five and thereafter, shall be accompanied by a registration
16 fee of two hundred dollars except that no registration fee shall be
17 required from any consultant who in any year does not expend, incur or
18 receive an amount in excess of five thousand dollars of reportable
19 compensation and expenses, as provided in paragraph (v) of subdivision
20 (b) of section one-gg of this article, for the purposes of consulting or
21 of a public corporation. A fee of two hundred dollars shall be required
22 for any subsequent statement of registration filed by a consultant
23 during the same biennial period; (iv) The statement of registration
24 filed after the due date of a biennial registration shall be accompanied
25 by a registration fee that is prorated to one hundred dollars for any
26 registration filed after January first of the second calendar year
27 covered by the biennial reporting requirement. In addition to the fees
28 authorized by this section, the commission may impose a fee for late
29 filing of a registration statement required by this section not to
30 exceed twenty-five dollars for each day that the statement required to
31 be filed is late, except that if the consultant making a late filing has
32 not previously been required by statute to file such a statement, the
33 fee for late filing shall not exceed ten dollars for each day that the
34 statement required to be filed is late.

35 § 1-ee. Monthly registration docket. It shall be the duty of the
36 commission to compile a monthly docket of statements of registration
37 containing all information required by section one-dd of this article.
38 Each such monthly docket shall contain all statements of registration
39 filed during such month and all amendments to previously filed state-
40 ments of registration. Copies shall be made available for public
41 inspection.

42 § 1-ff. Termination of retainer, employment or designation. Upon the
43 termination of a consultant's retainer, employment or designation, such
44 consultant and the client on whose behalf such service has been rendered
45 shall both give written notice to the commission within thirty days
46 after the consultant ceases the activity that required such consultant
47 to file a statement of registration; however, such consultant shall
48 nevertheless comply with the bi-monthly reporting requirements up to the
49 date such activity has ceased as required by this article. The commis-
50 sion shall enter notice of such termination in the appropriate monthly
51 registration docket required by section one-ee of this article.

52 § 1-gg. Bi-monthly reports. (a) Any consultant required to file a
53 statement of registration pursuant to section one-dd of this article who
54 in any consultant year reasonably anticipates that during the year such
55 consultant will expend, incur or receive combined reportable compen-
56 sation and expenses in an amount in excess of five thousand dollars, as

1 provided in paragraph (v) of subdivision (b) of this section, for the
2 purpose of consulting, shall file with the commission a bi-monthly writ-
3 ten report, on forms supplied by the commission, by the fifteenth day
4 next succeeding the end of the reporting period in which the consultant
5 was first required to file a statement of registration. Such reporting
6 periods shall be the period of January first to the last day of Febru-
7 ary, March first to April thirtieth, May first to June thirtieth, July
8 first to August thirty-first, September first to October thirty-first
9 and November first to December thirty-first.

10 (b) Such bi-monthly report shall contain:

11 (i) the name, address and telephone number of the consultant;

12 (ii) the name, address and telephone number of the client by whom or
13 on whose behalf the consultant is retained, employed or designated;

14 (iii) the following information on which the consultant has consulted:

15 (A) a description of the general subject or subjects, (B) the legisla-
16 tive bill numbers of any bills, (C) the numbers or subject matter (if
17 there are no numbers) of gubernatorial executive orders or executive
18 orders issued by the chief executive officer of a municipality, (D) the
19 subject matter of and tribes involved in tribal-state compacts, memoran-
20 da of understanding, or any other state-tribal agreements and any state
21 actions related to class III gaming as provided in 25 U.S.C. § 2701, (E)
22 the rule, regulation, and ratemaking or municipal ordinance or resol-
23 ution numbers of any rules, regulations, or rates or ordinance or
24 proposed rules, regulations, or rates or municipal ordinances or resol-
25 utions, and (F) the titles and any identifying numbers of any procure-
26 ment contracts and other documents disseminated by a state agency,
27 either house of the state legislature, the unified court system, munici-
28 pal agency or local legislative body in connection with a governmental
29 procurement;

30 (iv) the name of the person, organization, or legislative body before
31 which the consultant has consulted;

32 (v) (A) the compensation paid or owed to the consultant, and any
33 expenses expended, received or incurred by the consultant for the
34 purpose of consulting.

35 (B) expenses required to be reported pursuant to subparagraph (A) of
36 this paragraph shall be listed in the aggregate if seventy-five dollars
37 or less and if more than seventy-five dollars such expenses shall be
38 detailed as to amount, to whom paid, and for what purpose; and where
39 such expense is more than seventy-five dollars on behalf of any one
40 person, the name of such person shall be listed.

41 (C) for the purposes of this paragraph, expenses shall not include:

42 (1) personal sustenance, lodging and travel disbursements of such
43 consultant;

44 (2) expenses, not in excess of five hundred dollars in any one calen-
45 dar year, directly incurred for the printing or other means of reprod-
46 uction or mailing of letters, memoranda or other written communications.

47 (D) expenses paid or incurred for salaries other than that of the
48 consultant shall be listed in the aggregate.

49 (E) expenses of more than fifty dollars shall be paid by check or
50 substantiated by receipts and such checks and receipts shall be kept on
51 file by the consultant for a period of three years.

52 (c) (i) All such bi-monthly reports shall be subject to review by the
53 commission.

54 (ii) Such bi-monthly reports shall be kept on file for three years and
55 shall be open to public inspection during such time.

1 (iii) In addition to the filing fees authorized by this article, the
2 commission may impose a fee for late filing of a bi-monthly report
3 required by this section not to exceed twenty-five dollars for each day
4 that the report required to be filed is late, except that if the
5 consultant making a late filing has not previously been required by
6 statute to file such a report, the fee for late filing shall not exceed
7 ten dollars for each day that the report required to be filed is late.

8 (iv) Any consultant registered pursuant to section one-dd of this
9 article whose consulting activity is performed on its own behalf and not
10 pursuant to retention by a client:

11 (A) that has spent over fifty thousand dollars for reportable compen-
12 sation and expenses for consulting either during the calendar year, or
13 during the twelve-month period, prior to the date of this bi-monthly
14 report, and

15 (B) at least three percent of whose total expenditures during the same
16 period were devoted to consulting in New York shall report to the
17 commission the names of each source of funding over five thousand
18 dollars from a single source that were used to fund the consulting
19 activities reported and the amounts received from each identified source
20 of funding.

21 This disclosure shall not require disclosure of the sources of funding
22 whose disclosure, in the determination of the commission based upon a
23 review of the relevant facts presented by the reporting consultant, may
24 cause harm, threats, harassment, or reprisals to the source or to indi-
25 viduals or property affiliated with the source. The reporting consultant
26 may appeal the commission's determination and such appeal shall be heard
27 by a judicial hearing officer who is independent and not affiliated with
28 or employed by the commission, pursuant to regulations promulgated by
29 the commission. The reporting consultant shall not be required to
30 disclose the sources of funding that are the subject of such appeal
31 pending final judgment on appeal.

32 The disclosure shall not apply to:

33 (i) any corporation registered pursuant to article seven-A of the
34 executive law that is qualified as an exempt organization by the United
35 States Department of the Treasury under I.R.C. § 501(c)(3);

36 (ii) any corporation registered pursuant to article seven-A of the
37 executive law that is qualified as an exempt organization by the United
38 States Department of the Treasury under I.R.C. § 501(c)(4) and whose
39 primary activities concern any area of public concern determined by the
40 commission to create a substantial likelihood that application of this
41 disclosure requirement would lead to harm, threats, harassment, or
42 reprisals to a source of funding or to individuals or property affil-
43 iated with such source, including but not limited to the area of civil
44 rights and civil liberties and any other area of public concern deter-
45 mined pursuant to regulations promulgated by the commission to form a
46 proper basis for exemption on this basis from this disclosure require-
47 ment; or

48 (iii) any governmental entity.

49 The joint commission on public ethics shall promulgate regulations to
50 implement these requirements.

51 § 1-hh. Contingent retainer. (a) No client shall retain or employ any
52 consultant for compensation, the rate or amount of which compensation in
53 whole or part is contingent or dependent upon:

54 (i) (A) the passage or defeat of any legislative bill or the approval
55 or veto of any legislation by the governor, (B) the terms, issuance,
56 modification or rescission of a gubernatorial executive order, (C) the

1 terms, approval or disapproval, or the implementation and administration
2 of tribal-state compacts, memoranda of understanding, or any other
3 tribal-state agreements and any state actions related to class III
4 gaming as provided in 25 U.S.C. § 2701, or (D) the adoption or rejection
5 of any code, rule or regulation having the force and effect of law or
6 the outcome of any rate making proceeding by a state agency;

7 (ii)(A) the passage or defeat of any local law, ordinance, regulation
8 or resolution by any municipality or subdivision thereof, (B) the terms,
9 issuance, modification or rescission of an executive order issued by the
10 chief executive officer of a municipality, or (C) the adoption,
11 rejection or implementation of any rule, resolution or regulation having
12 the force and effect of a local law, ordinance or regulation or any rate
13 making proceeding by any municipality or subdivision thereof;

14 (iii) any determination by a state agency, either house of the state
15 legislature, the unified court system, municipal agency or local legis-
16 lative body with respect to a governmental procurement or a grant, loan
17 or agreement involving the disbursement of public monies.

18 (b) No person shall accept such a retainer or employment. A violation
19 of this section shall be a class A misdemeanor.

20 § 1-ii. Reports involving disbursement of public monies. (a) Any
21 consultant required to file a statement of registration pursuant to
22 section one-dd of this article who in any consulting year reasonably
23 anticipates that during the year they will expend, incur or receive
24 combined reportable compensation and expenses in an amount in excess of
25 five thousand dollars shall file with the commission, on forms supplied
26 by the commission, a report of any attempts to influence a determination
27 by a public official, or by a person or entity working in cooperation
28 with a public official, with respect to the solicitation, award or
29 administration of a grant, loan, or agreement involving the disbursement
30 of public monies in excess of fifteen thousand dollars other than a
31 governmental procurement as defined in section one-bb of this article.

32 (b) Such public monies consulting reports shall contain:

33 (i) the name, address and telephone number of the consultant and the
34 individuals employed by the consultant engaged in such public monies
35 consulting activities;

36 (ii) the name, address and telephone number of the client by whom or
37 on whose behalf the consultant is retained, employed or designated on
38 whose behalf the consultant has engaged in consulting reportable under
39 this paragraph;

40 (iii) a description of the grant, loan, or agreement involving the
41 disbursement of public monies on which the consultant has consulted;

42 (iv) the name of the person, organization, or legislative body before
43 which the consultant has engaged in consulting reportable under this
44 paragraph; and

45 (v) the compensation paid or owed to the consultant, and any expenses
46 expended, received or incurred by the consultant for the purpose of
47 consulting reportable under this paragraph.

48 (c) Public monies consulting reports required pursuant to this section
49 shall be filed in accordance with the schedule applicable to the filing
50 of bi-monthly reports pursuant to section one-gg of this article and
51 shall be filed not later than the fifteenth day next succeeding the end
52 of such reporting period.

53 (d) In addition to any other fees authorized by this section, the
54 commission may impose a fee for late filing of a report required by this
55 subdivision not to exceed twenty-five dollars for each day that the
56 report required to be filed is late, except that if the consultant

1 making a late filing has not previously been required by statute to file
2 such a report, the fee for late filing shall not exceed ten dollars for
3 each day that the report required to be filed is late.

4 (e) All reports filed pursuant to this subdivision shall be subject to
5 review by the commission. Such reports shall be kept in electronic form
6 by the commission and shall be available for public inspection.

7 § 1-jj. Prohibition of gifts. No individual or entity required to be
8 listed on a statement of registration pursuant to this article shall
9 offer or give a gift to any public official as defined within this arti-
10 cle, unless under the circumstances it is not reasonable to infer that
11 the gift was intended to influence such public official. No individual
12 or entity required to be listed on a statement of registration pursuant
13 to this article shall offer or give a gift to the spouse or unemancipat-
14 ed child of any public official as defined within this article under
15 circumstances where it is reasonable to infer that the gift was intended
16 to influence such public official. No spouse or unemancipated child of
17 an individual required to be listed on a statement of registration
18 pursuant to this article shall offer or give a gift to a public official
19 under circumstances where it is reasonable to infer that the gift was
20 intended to influence such public official. This section shall not apply
21 to gifts to officers, members or directors of boards, commissions, coun-
22 cils, public authorities or public benefit corporations who receive no
23 compensation or are compensated on a per diem basis, unless the person
24 listed on the statement of registration appears or has matters pending
25 before the board, commission or council on which the recipient sits.

26 § 1-kk. Penalties. (a) (i) Any consultant, public corporation, or
27 client who knowingly and wilfully fails to file timely a report or
28 statement required by this section or knowingly and wilfully files false
29 information or knowingly and wilfully violates section one-jj of this
30 article shall be guilty of a class A misdemeanor; and

31 (ii) any consultant, public corporation, or client who knowingly and
32 wilfully fails to file timely a report or statement required by this
33 section or knowingly and wilfully files false information or knowingly
34 and wilfully violates section one-jj of this article, after having
35 previously been convicted in the preceding five years of the crime
36 described in paragraph (i) of this subdivision, shall be guilty of a
37 class E felony. Any consultant convicted of or pleading guilty to a
38 felony under the provisions of this section may be barred from acting as
39 a consultant for a period of one year from the date of the conviction.
40 For the purposes of this subdivision, the chief administrative officer
41 of any organization required to file a statement or report shall be the
42 person responsible for making and filing such statement or report unless
43 some other person prior to the due date thereof has been duly designated
44 to make and file such statement or report.

45 (b)(i) A consultant, public corporation, or client who knowingly and
46 wilfully fails to file a statement or report within the time required
47 for the filing of such report or knowingly and wilfully violates section
48 one-jj of this article shall be subject to a civil penalty for each such
49 failure or violation, in an amount not to exceed the greater of twenty-
50 five thousand dollars or three times the amount the person failed to
51 report properly or unlawfully contributed, expended, gave or received,
52 to be assessed by the commission.

53 (ii) A consultant, public corporation, or client who knowingly and
54 wilfully files a false statement or report shall be subject to a civil
55 penalty, in an amount not to exceed the greater of fifty thousand

1 dollars or five times the amount the person failed to report properly,
2 to be assessed by the commission.

3 (iii) Any consultant or client that knowingly and wilfully fails to
4 file a statement or report within the time required for the filing of
5 such report, knowingly and wilfully files a false statement or report,
6 or knowingly and wilfully violates section one-jj of this article, after
7 having been found by the commission to have knowing and wilfully commit-
8 ted such conduct or violation in the preceding five years, may be
9 subject to a determination that the consultant or client is prohibited
10 from engaging in consulting activities, for a period of one year.

11 (iv) Any consultant or client that knowingly and wilfully engages in
12 consulting activities, during the period in which they are prohibited
13 from engaging in consulting activities, may be subject to a determi-
14 nation that the consultant or client is prohibited from engaging in
15 consulting activities, for a period of up to four years, and shall be
16 subject to a civil penalty not to exceed fifty thousand dollars, plus a
17 civil penalty in an amount equal to five times the value of any gift,
18 compensation or benefit received as a result of the violation.

19 (v) A consultant, public corporation, or client who knowingly and
20 wilfully fails to retain their records pursuant to paragraph (iii) of
21 subdivision (c) of section one-dd of this article or subparagraph (E) of
22 paragraph (v) of subdivision (b) of section one-gg of this article,
23 shall be subject to a civil penalty in an amount of two thousand dollars
24 per violation to be assessed by the commission.

25 (c)(i) Any assessment or order to debar shall be determined only after
26 a hearing at which the party shall be entitled to appear, present
27 evidence and be heard. Any assessment or order to debar pursuant to this
28 section may only be imposed after the commission sends by certified and
29 first-class mail written notice of intent to assess a penalty or order
30 to debar and the basis for the penalty or order to debar. Any assessment
31 may be recovered in an action brought by the attorney general.

32 (ii) In assessing any fine or penalty pursuant to this section, the
33 commission shall consider: (A) as a mitigating factor that the consult-
34 ant, public corporation or client has not previously been required to
35 register, and (B) as an aggravating factor that the consultant, public
36 corporation or client has had fines or penalties assessed against it in
37 the past. The amount of compensation expended, incurred or received
38 shall be a factor to consider in determining a proportionate penalty.

39 (iii) Any consultant, public corporation or client who receives a
40 notice of intent to assess a penalty for knowingly and wilfully failing
41 to file a report or statement pursuant to subdivision (b) of this
42 section and who has never previously received a notice of intent to
43 assess a penalty for failing to file a report or statement required
44 under this section shall be granted fifteen days within which to file
45 the statement of registration or report without being subject to the
46 fine or penalty set forth in subdivision (b) of this section. Upon the
47 failure of such consultant, public corporation or client to file within
48 such fifteen day period, such consultant, public corporation or client
49 shall be subject to a fine or penalty pursuant to subdivision (b) of
50 this section.

51 (d) All moneys recovered by the attorney general or received by the
52 commission from the assessment of civil penalties authorized by this
53 section shall be deposited to the general fund.

54 § 1-11. Enforcement. (a) All statements and reports required under
55 this article shall be subject to a declaration by the person making and
56 filing such statement and report that the information is true, correct

1 and complete to the best knowledge and belief of the signer under the
2 penalties of perjury.

3 (b) The commission shall be charged with the duty of reviewing all
4 statements and reports required under this article for violations, and
5 it shall be their duty, if they deem such to be wilful, to report such
6 determination to the attorney general or other appropriate authority.

7 (c) Upon receipt of notice of such failure from the commission, the
8 attorney general or other appropriate authority shall take such action
9 as he deems appropriate to secure compliance with the provisions of this
10 article.

11 § 1-mm. Record of appearances. The commission shall promulgate all
12 rules or regulations and any procedures, forms, or instructions neces-
13 sary to implement the provisions of section one hundred sixty-six of the
14 executive law relating to the quarterly filing of the record of appear-
15 ances before regulatory agencies.

16 § 1-nn. Publication of statement on consultant disclosure regulations.
17 The commission shall publish a statement on consulting regulations
18 setting forth the requirements of this article in a clear and brief
19 manner. Such statement shall contain an explanation of the registration
20 and filing requirements and the penalties for violation thereof, togeth-
21 er with such other information as the commission shall determine, and
22 copies thereof shall be made available to the public at convenient
23 locations throughout the state.

24 § 1-oo. Public access to records. The commission shall make informa-
25 tion furnished by consultants and clients available to the public for
26 inspection and copying in electronic and paper formats. Access to such
27 information shall also be made available for remote computer users
28 through the internet network.

29 § 1-pp. Applicability of certain laws. The provisions of this article
30 including, but not limited to, any proceeding or hearing conducted
31 pursuant hereto, shall be subject to the applicable provisions of the
32 state administrative procedure act and section seventy-three of the
33 civil rights law.

34 § 1-qq. Separability clause. If any part or provision of this article
35 or the application thereof to any person or organization is adjudged by
36 a court of competent jurisdiction to be unconstitutional, such judgment
37 shall not affect or impair any other part or provision or the applica-
38 tion thereof to any other person or organization, but shall be confined
39 in its operation to the part, provision, person or organization directly
40 involved in the controversy in which such judgment shall have been
41 rendered.

42 § 2. This act shall take effect immediately.